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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/964,916

09/27/2001

Brian A. Batke

110003.97605

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01/09/2009

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EXAMINER

MEUCCL, MICHAEL D

ART UNIT

PAPER NUMBER

2442

MAIL DATE

DELIVERY MODE

01/09/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 09/964,916</p>	<p>Applicant(s) BATKE ET AL.</p>	
	<p>Examiner MICHAEL D. MEUCCI</p>	<p>Art Unit 2442</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-23.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Andrew Caldwell/
Supervisory Patent Examiner, Art Unit 2442

Continuation of 3. NOTE: The amendments to the independent claims change the scope of the claims and would require further search and consideration.

Continuation of 11: (A) The applicant contends that no additional searching is required as a result of the amended claims. The examiner respectfully disagrees. The addition of the requirements that the network signal is transmitted according to a protocol of the control network and not transmitted in accordance with any Internet transport layer protocol and any Internet network layer protocol will require additional search and consideration because the scope of the claims has changed due to the amended text.

(B) The applicant disagrees that the user of the transport and network layers does not concede that a protocol is formatted in these layers. The examiner points out that the SOAP protocol is in fact formatted in the Internet application layer (layer 7 of the OSI model). The examiner also points out that the SOAP protocol uses both the Internet transport layer (layer 4) and Internet network layer (layer 3) for transmission. The use of the transport and network layers, however, does not concede that the SOAP protocol is formatted in these layers, as argued. The SOAP protocol is still formatted as an application layer protocol, as is required by the claim, and is not formatted as a transport or network layer protocol, which is also required by the claims. As such, the rejection remains proper and is maintained by the examiner.

(C) The applicant contends that the references do not teach "processing an Internet media access control protocol and a TCP/IP protocol with respect to the request signal. The examiner respectfully disagrees. The examiner points out that Thibault discloses: "Particularly, the front end 25a responds to requests received over the network in TCP/IP protocol to generate calls to object manager 25c in accord with its aforementioned API," (lines 50-53 of column 6) which teaches TCP/IP, while Kastner discloses: "The SPC further includes an LAN-interface 113 in the form of an Ethernet adaptor to which there is connected a network line 114 which is formed by an Ethernet cable. That network line 114 is connected to a further LAN-interface 121 of an operating unit 120, the LAN-interface 121 also being in the form of an Ethernet adaptor," (lines 1-6 of column 6), which teaches Internet MAC protocols. From wikipedia (http://en.wikipedia.org/wiki/MAC_address): "In TCP/IP networks, the MAC address of a subnet interface can be queried with the IP address using the Address Resolution Protocol (ARP) for Internet Protocol Version 4 (IPv4) or the Neighbor Discovery Protocol (NDP) for IPv6. On broadcast networks, such as Ethernet, the MAC address uniquely identifies each node and allows frames to be marked for specific hosts. It thus forms the basis of most of the Link layer (OSI Layer 2) networking upon which upper layer protocols rely to produce complex, functioning networks." It should be clear from the statements that Kastner does teach the use of Internet media access control protocols as claimed in the applicant's invention. As such, the rejection remains proper and is maintained by the examiner.

(D) In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., use of multiple communications stacks) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Additionally, the Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. In regards to this point, the applicant is arguing a limitation that is not claimed and provides no support for these allegations. The examiner sees no need to further discuss this limitation.

(E) The applicant's remaining arguments are directed towards subject matter discussed in point s (A)-(D) above.